

# Public Service Commission of West Virginia

SEP 20 2018

FCC Mailroom

201 Brooks Street, P.O. Box 812  
Charleston, West Virginia 25323

Michael A. Albert  
Chairman



September 12, 2018

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
9300 East Hampton Drive  
Capitol Heights, Maryland 20743  
(overnight mail)

DOCKET FILE COPY ORIGINAL

(Duplicate copy to:)  
Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Universal Service Administrative Company  
Vice President, High Cost Division  
700 12<sup>th</sup> Street, NW, Suite 900  
Washington, DC 20005

Re: CC Docket 96-45/WC Docket No. 14-58, Annual State Certification  
of Support for Eligible Telecommunications Carriers Pursuant to 47  
C.F.R. §54.314

Pursuant to the requirements of 47 C.F.R. §54.314, The Public Service Commission of West Virginia (WVPSC) hereby certifies to the Federal Communications Commission (FCC) and the Universal Service Administrative Company that the telecommunications carriers included in this letter are eligible to receive federal high-cost or low income support for the program years cited.

Specifically, WVPSC certifies for the carriers listed that all federal high-cost or low income support provided to such carriers within West Virginia was used during the

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preceding calendar year, 2017, and will be used in the coming calendar year, 2019, only for the provision, maintenance and upgrading of facilities and services for which the support is intended. 47 C.F.R. §54.314. The certified carriers include the following:

**Carriers Certified to Receive Support**

<b>Carrier</b>	<b>SAC<sup>1</sup></b>	<b>Type<sup>2</sup></b>
American Broadband & Telecommunications Co.	209031	C
Armstrong Telephone Company - Northern Division	200267	I
Armstrong Telephone Company - West Virginia	200256	I
Boomerang Wireless, LLC	209030	C
Citizens Telecommunications Co. of West Virginia, Inc.	200271	I
Citizens Telecommunications Co. of West Virginia, Inc.	204338	I
Citizens Telecommunications Co. of West Virginia, Inc.	204339	I
Frontier West Virginia Inc.	205050	I
Global Connection Inc. of America	209025	C
Hardy Telecommunications, Inc. (CLEC)	209009	C
Hardy Telecommunications, Inc. (ILEC)	200259	I
i-wireless, LLC	209022	C
Lumos Networks, LLC, fka FiberNet, LLC	209002	C
New Cingular Wireless PCS, LLC dba AT&T Mobility	209012	C
Q-Link Wireless, LLC	209028	C
Sage Telecom Communications, LLC	209034	C
Spruce Knob-Seneca Rocks Telephone, Inc.	200257	I

<sup>1</sup> Study Area Code

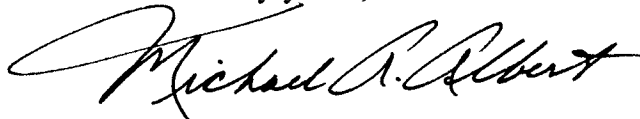
<sup>2</sup> I – Incumbent; C – Competitive

Tag Mobile, LLC	209026	C
Telrite Corporation	209016	C
Tempo Telecom, LLC	209032	C
TerraCom, Inc.	209017	C
Tracfone Wireless, Inc.	209013	C
USCOC of Cumberland & Hardy Cellular Telephone, Inc.	209005	C
USCOC of Cumberland & Hardy Cellular Telephone, Inc. (Mobility Fund)	208001	C
Virgin Mobile USA, L.P.	209015	C
War Acquisition Corp., dba OTT Communications	200258	I
West Side Telecommunications	200277	I

This certification is the product of formal proceedings before the WVPSC. General Investigation Regarding The Use of Federal Universal Service Funding By Eligible Telecommunications Carriers in West Virginia, Case No. 18-0478-T-GI (Recommended Decision Issued, August 20, 2018, Final September 9, 2018) (attached as Attachment A). In that proceeding, WVPSC reviewed information filed by each carrier, including disclosures under 47 C.F.R. §54.313, to support this certification.

On behalf of the people of West Virginia, the WVPSC expresses its appreciation for the continuing efforts of the FCC in working to expand advanced telecommunications services throughout the nation.

Sincerely yours,

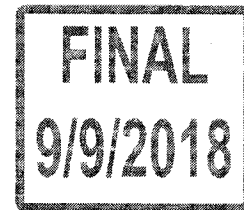


Michael A. Albert  
Chairman

MJM/sm  
Enclosures

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: August 20, 2018



CASE NO. 18-0478-T-GI

GENERAL INVESTIGATION REGARDING  
THE USE OF FEDERAL UNIVERSAL SERVICE  
FUNDING BY ELIGIBLE TELECOMMUNICATIONS  
CARRIERS IN WEST VIRGINIA.

RECOMMENDED DECISION

Eligible telecommunications carriers (ETCs) in West Virginia are appropriately using federal universal service funds (USF) as set forth below.

BACKGROUND

On April 12, 2018, the Commission opened a general investigation into the proper use of USF by ETCs in West Virginia to provide information supporting the annual certification made to the Federal Communications Commission (FCC) under 47 C.F.R. §54.314. The Commission also referred this matter to its Division of Administrative Law Judges (ALJ) for a Recommended Decision on or before September 10, 2018.

On April 18, 2018, the presiding ALJ issued a Procedural Order directing ETCs to certify that they are properly using USF and file information required by the FCC under 47 C.F.R. §54.313. That Procedural Order also directed ETCs to file information to assist with a review conducted under Rule 10.6.c of the Rules for the Government of Telephone Utilities, 150 C.S.R. Series 6 (Telephone Rules). It initially required carriers to file the information on or before July 2, 2018. Finally, the Order directed the Executive Secretary to publish notice of this matter and inform the public that interested parties could file comments with the Commission by July 16, 2018.

The FCC has encouraged states to annually certify carriers that are eligible for USF and file a certification letter stating that federal high-cost funds flowing to carriers in that state in the preceding and upcoming calendar year are used in accord with Section 254(e) of the Telecommunications Act of 1934 (as amended)<sup>1</sup> (Act). (47 U.S.C. §254(e), 47 C.F.R. §54.314. See also, In the Matter of Connect America Fund, WC Docket 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663

<sup>1</sup> This statutory section states that federal USF received by ETCs must be used "only for the provision, maintenance and upgrading of facilities and services for which the support is intended."

(2011) (CAF Order).) If a state commission timely files its certification with the FCC and the Administrator of the Universal Service Administrative Company (USAC), then USF for the next calendar year will be forwarded to the certified ETCs. (*Id.*)

Therefore, the Commission initiated this general investigation regarding the use of federal USF by ETCs in West Virginia for the preceding calendar year (2017) and the upcoming calendar year (2019). The FCC has also expressed an expectation that state commissions utilize data filed by ETCs under 47 C.F.R. §54.313 to conduct a rigorous examination of the use of USF. In the event that an ETC is not using USF support as intended, a state commission may recommend that the FCC make prospective support adjustments or recover past support amounts.<sup>2</sup> (CAF Order at ¶612.)

On May 17, 2018, Commission Staff filed an initial memorandum stating that it would tender a final recommendation as directed by the April 18, 2018 Procedural Order.

On June 12, 2018, New Cingular Wireless PCS, LLC, dba AT&T Mobility (AT&T) moved for the Commission to extend the deadline for filing the data required by the April 18, 2018 Procedural Order from July 2, 2018, to July 16, 2018. AT&T noted that the FCC extended the deadline for filing FCC Form 481 to July 16, 2018. The request was granted. (June 15, 2018 Procedural Order.)

Most ETCs subsequently filed complete USF certifications in response to the April 18, 2018 Procedural Order along with forms the FCC requires carriers to file with the Commission.

Certain carriers also requested that the Commission maintain a portion of their filings under seal, asserting that the sealed documents contain trade secrets exempt from the provisions of the West Virginia Freedom of Information Act, codified as W.Va. Code §§29B-1-1 to 7 (WV FOIA). The carriers requesting that the Commission continue to seal a portion of their filings in this matter include USCOC of Cumberland and Hardy Cellular Telephone, Inc. (US Cellular), AT&T, War Acquisition Corp., dba OTT Communications (War) and West Side Telecommunications (West Side).

On August 6, 2018, Staff filed a memorandum recommending that the Commission certify most ETCs to the FCC as properly using USF based on responses carriers filed to the April 18, 2018 Procedural Order. Staff stated, however, that certain carriers failed to either file sufficient information or respond to the April 18, 2018 Procedural Order.

In response to the August 6, 2018 Staff Memorandum, the presiding ALJ directed the carriers Staff cited to comply with the April 18, 2018 Procedural Order. The Procedural Order also directed Staff to provide an updated recommendation to include

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<sup>2</sup> Alternatively, this Commission may rescind an ETC designation or refuse to certify the ETC.

carriers that belatedly provided adequate information to allow the Commission to certify their use of USF to the FCC. (August 7, 2018 Procedural Order.)

Subsequent to the August 7, 2018 Procedural Order, one carrier Staff cited in its August 6, 2018 Memorandum completed its response to the April 18, 2018 Procedural Order. Cellspan, Inc. (Cellspan) and Gateway Telecom, LLC, dba Stratuswave Communications (Gateway)<sup>3</sup> did not respond.

On August 16, 2018, Staff filed a further memorandum to update its recommendation. Staff recommended that the Commission certify every ETC that responded to either the April 18, 2018 or August 7, 2018 Procedural Orders.

Specifically, Staff recommended that the Commission certify to the FCC and USAC that the following ETCs properly used USF in the prior calendar year and will continue to use USF properly in the coming calendar year:

1. American Broadband & Telecommunications Company
2. Armstrong Telephone Company - Northern Division
3. Armstrong Telephone Company - West Virginia
4. Boomerang Wireless, LLC
5. Citizens Telecommunications Company of West Virginia, Inc.
6. Frontier West Virginia Inc.
7. Global Connection Inc. of America
8. Hardy Telecommunications, Inc. (CLEC)
9. Hardy Telecommunications, Inc. (ILEC)
10. i-wireless, LLC
11. Lumos Networks, LLC, fka FiberNet, LLC
12. New Cingular Wireless PCS, LLC dba AT&T Mobility
13. Q-Link Wireless, LLC
14. Sage Telecom Communications, LLC
15. Spruce Knob-Seneca Rocks Telephone, Inc.
16. Tag Mobile, LLC
17. Telrite Corporation
18. Tempo Telecom, LLC
19. TerraCom, Inc.
20. Tracfone Wireless, Inc.
21. USCOC of Cumberland and Hardy Cellular Telephone, Inc.
22. Virgin Mobile USA, L.P.
23. War Acquisition Corp., dba OTT Communications
24. West Side Telecommunications

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<sup>3</sup> Gateway has petitioned for Commission consent to an asset transfer to a third party. (See, Gateway Telecom, LLC, et al., Case No. 18-1097-T-PC.)

Certain carriers filed a response to the Staff memoranda. The responding carriers concurred with the Staff recommendation to certify their use of USF to the FCC, but disputed the Staff recommendation regarding the protective treatment requests.

No member of the general public filed comments in this proceeding after notice by publication in a newspaper of statewide circulation.

## DISCUSSION

### Use of Support Certification

With regard to the use of USF, it is reasonable to accept the Staff recommendation to certify that the twenty-four telecommunications carriers listed above are eligible to continue to receive federal universal service support. Each carrier has submitted data to the Commission demonstrating compliance with the relevant FCC regulations. That data supports the Staff recommendation and enables the Commission to find that the support the listed ETCs received in the preceding calendar year, 2017, and will use in the coming calendar year, 2019, is only applied to the provision, maintenance and upgrading of facilities and services for which the support is intended, consistent with the Act.

Therefore, the Commission will certify by letter to the FCC and USAC that the ETCs listed above are properly using USF consistent with Section 254(e) of the Act. Cellspan and Gateway, however, will not be certified, because they failed to respond in this proceeding.

### Lifeline and Tel-Assistance Review

Under Telephone Rule 10.6, the Commission annually reviews the efforts of ETCs to participate in the Lifeline program and the state-based Tel-Assistance program. The filings demonstrate that ETCs are participating in one or both programs. ETCs should continue to participate in these programs and the Commission will continue to monitor the programs in future USF proceedings.

### Requests for Protective Orders

Most ETCs did not request any type of protective order for their filings in this matter. Certain carriers, however, requested protective orders for portions of their filings, arguing that the sealed information is exempt from disclosure under WV FOIA. The carriers seeking a protective order include AT&T, US Cellular, War and West Side.

The carriers seeking protective treatment each filed a motion and affidavit in support of their protective treatment requests. There is no need at present to make a final ruling on the pending protective treatment requests. Instead, it is reasonable to direct the Executive Secretary to continue to hold the unredacted versions of the sealed filings separate and apart from the remnant of this case file until the Commission receives and

reviews a request for that information. By deferring consideration of the protective treatment requests, the Commission is not taking any final position on the application of WV FOIA to the sealed data.

#### Requirements for 2019 Certification Filings

In prior USF proceedings, the Commission directed all ETCs to file certain information with the Commission by July 1<sup>st</sup> of the following year to assure that it would have the necessary data available for the upcoming certification proceeding. The Commission will require similar filings on or before July 1, 2019. ETCs should (i) certify their proper use of universal service support by affidavit on or before that date, (ii) file information required under 47 C.F.R. §54.313, (iii) include copies of the most recent FCC Form 481, FCC Form 690 (if applicable) and FCC Form 555, (iv) describe their efforts to promote low income programs, and (v) include their Study Area Code.

#### FINDINGS OF FACT

1. The Commission initiated this general investigation to review the use of federal USF by ETCs in West Virginia. (April 12, 2018 Commission Order.)
2. Twenty-four ETCs filed USF documentation and requested that this Commission certify that they have used federal USF support consistent with the Act in 2017 and will continue to do so in calendar year 2019. (ETC USF filings.)
3. Certain carriers requested that the Commission seal portions of their filings in this matter, asserting that the sealed data are exempt from WV FOIA. (Motions for Protective Order.)
4. Staff recommended that the Commission certify to the FCC and USAC that all ETCs that responded to the April 18, 2018 or August 7, 2018 Procedural Orders previously used USF support consistent with the Act and will continue to do so in calendar year 2019. (August 6, 2018 and August 16, 2018 Staff Memoranda.)
5. Cellspan and Gateway did not respond in this proceeding. (Id.)

#### CONCLUSIONS OF LAW

1. The twenty-four ETCs Staff recommended should be certified by letter to the FCC and USAC as eligible to continue to receive federal universal service support because they used that support in the prior calendar year only for the provision, maintenance and upgrading of facilities and services for which the support is intended and will continue to do so in the upcoming calendar year.
2. Gateway and Cellspan should not be certified because they failed to respond in this proceeding.



3. To facilitate certification filings for next year, it is reasonable to direct carriers to file information listed in the relevant discussion above with this Commission regardless of the opening of a new general investigation.

4. The Executive Secretary will continue to segregate the material subject to the protective treatment motions filed in this matter until the Commission receives and reviews a WV FOIA request for that information. (General Investigation Regarding the Use of Federal Universal Service Funding, Case No. 14-0566-T-GI (Commission Order, September 16, 2014).)

### ORDER

IT IS THEREFORE ORDERED that a certification be issued to the FCC and USAC, once this Recommended Decision becomes a final Commission Order, stating that the following carriers used federal high-cost and other universal service support only for the provision, maintenance and upgrading of facilities and services for which the support is intended in the preceding calendar year and will do so in the coming calendar year:

1. American Broadband & Telecommunications Company
2. Armstrong Telephone Company - Northern Division
3. Armstrong Telephone Company - West Virginia
4. Boomerang Wireless, LLC
5. Citizens Telecommunications Company of West Virginia, Inc.
6. Frontier West Virginia Inc.
7. Global Connection Inc. of America
8. Hardy Telecommunications, Inc. (CLEC)
9. Hardy Telecommunications, Inc. (ILEC)
10. i-wireless, LLC
11. Lumos Networks, LLC, fka FiberNet, LLC
12. New Cingular Wireless PCS, LLC dba AT&T Mobility
13. Q-Link Wireless, LLC
14. Sage Telecom Communications, LLC
15. Spruce Knob-Seneca Rocks Telephone, Inc.
16. Tag Mobile, LLC
17. Telrite Corporation
18. Tempo Telecom, LLC
19. TerraCom, Inc.
20. Tracfone Wireless, Inc.
21. USCOC of Cumberland and Hardy Cellular Telephone, Inc.
22. Virgin Mobile USA, L.P.
23. War Acquisition Corp., dba OTT Communications
24. West Side Telecommunications

IT IS FURTHER ORDERED that on or before July 1, 2019, all ETCs designated by this Commission to receive high-cost or other support shall (i) certify their proper use of universal service support by affidavit on or before that date, (ii) file information required under 47 C.F.R. §54.313, (iii) include copies of the most recent FCC Form 481, FCC Form 690 (if applicable) and FCC Form 555, (iv) describe their efforts to promote low income programs, and (v) include their Study Area Code.

IT IS FURTHER ORDERED that the Executive Secretary shall docket a copy of the Commission letter to the FCC issued pursuant to this Order in this proceeding once available.

IT IS FURTHER ORDERED that the requests for protective orders filed in this matter are deferred until the filing of a request under WV FOIA. The Executive Secretary shall maintain the sealed responses separate and apart from the rest of the file pending further Order. If the Commission receives a request to inspect any of the sealed information, the Commission will afford the affected carrier a brief opportunity to respond to each WV FOIA request.

IT IS FURTHER ORDERED that on the effective date of this Recommended Decision, this matter is removed from the active docket of Commission cases.

The Executive Secretary is ordered to serve this Order upon the Commission and its Staff by hand delivery, upon all parties of record who have filed an e-service agreement with the Commission by electronic service and upon all other parties by United States Certified Mail, return receipt requested.

Leave is granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen days of the date of this Order. If exceptions are filed, the parties filing exceptions shall certify that all parties of record have been served the exceptions.

If no exceptions are filed, this Order shall become the Order of the Commission, without further action or order, five days following the expiration of the fifteen day time period, unless it is ordered stayed by the Commission.

Any party may request waiver of the right to file exceptions by filing an appropriate petition in writing with the Executive Secretary. No such waiver, however, will be effective until approved by order of the Commission.



Matthew J. Minney  
Deputy Chief Administrative Law Judge

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